7218164/2023/TW-LTR-II-SOW01

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

TRIBAL WELFARE DEPARTMENT – LTR – Sri Alapati China Somaraju S/o Ramanna, Kommugudem Village, Buttaigudem (M), West Godavari District has filed a Revision Petition before the Government of A.P., against the orders of Additional Agent to Government cum Project Officer, ITDA, KR Puram, West Godavari District in S.R.A No.2/2016, dated.02.03.2019 in respect of land measuring Acres 2.57 cts. in R.S. No.156 and measuring Ac.2.43 cts. in R.S.No.159 of Lakshmudugudem (V), Buttaigudem (M), West Godavari District - Dismissed – Orders – Issued.

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SOCIAL WELFARE (TW.LTR.I) DEPARTMENT

G.O.MS.No.28 **Dated: 28.03.2023**

Read the following:-

1. Revision Petition filed by Sri A. China Somaraju S/o Ramanna, Kommugudem (V), Buttaigudem (M), West Godavari District before the Hon'ble Dy.CM(TW), dt.30.04.2019 together with its enclosures.
2. Govt. Memo No.SOW01-TW0LTR(RPWG)/6/2019, Dt:06.10.2020, 05.07.2021 & 09.07.2021.
3. Hon'ble High Court order in W.P.No.11913 of 2019, dt.14.07.2021 filed by Sri A. China Somaraju S/o. Ramanna, Kommugudem (V), Buttaigudem (M), West Godavari District.
4. From the Project Officer, ITDA, K.R.Puram, Lr.Rc.No.2/SRA/ 2016/ITDA, Dated: 02.08.2021.
5. Govt. letter No.SOW01-TW0LTR(RPWG)/6/2019, dt.14.11.2022.

ORDER:

Sri Alapati China Somaraju S/o Ramanna, Kommugudem Village, Buttaigudem (M), West Godavari District has filed a Revision petition before the Government of A.P., against the orders of Additional Agent to Government cum Project Officer, ITDA, K.R Puram, West Godavari District in S.R.A No.2/2016, dated.02.03.2019 in respect of land measuring Acres 2.57 cts. in R.S.No.156 and measuring Ac.2.43 cts. in R.S.No.159 of Lakshmudugudem (V), Buttaigudem (M), West Godavari District vide reference 1st read above.

(P.T.O)

2. Brief history of the subject case:

a) The Special Deputy Tahsildar (TW), K.R.Puram has filed a Complaint under section 3(2)(a) A.P.S.A.L.T.R.,1959 as amended by Reg. 1/70 stating that the scheduled mentioned lands, situated in Lakshmudugudem (V) an agency area are in possession and enjoyment of the respondents who are Non Tribals in contravention of subsection (1) of section 3 of A.P.S.A.L.T.R.,1959 as amended by Reg. 1/70 and requested that the said lands may be taken possession of ejecting respondents declaring that the transactions are and void under the provisions of the said regulations and they may be ordered to be assigned to the eligible landless poor Tribals.

b) After examining the respondent and after perusing the connected records, it is noticed that there is no contravention of section 3(1) of A.P.S.A.L.T.R., 1959 as amended by Reg.1/70 the SDC (TW), K.R.Puram Disallowed the Complaint in S.R.No.4/2015, Dt.19.12.2015.

c) Aggrieved by the orders of the SDC (TW), K.R.Puram, Kum. Chodem Durga D/o. Butchanna, Turupu regulakunta (V), Buttaigudem (M) has filed an appeal against the orders dt.19.12.2015 in S.R.No.4/2015 before the Addl. Agent to Govt. cum Project Officer, ITDA, K.R.Puram, West Godavari District.

d) After careful examination of the matter, the Additional Agent to Government cum Project Officer, ITDA, K.R.Puram has allowed the appeal filed by the Kum. Chodem Durga D/o Butchanna with regard to the scheduled property covered by R.S No.156 (Ac.2.57 Cts.) and R.S. No. 159 (Ac.2.43 Cts) Lakshmudugudem (V), Buttaigudem (M) and set aside the orders passed by the SDC (TW), K.R.Puram District in S.R.A No.2/2016, dated.02.03.2019.

3. Aggrieved by the above orders, Sri Alapati China Somaraju S/o Ramanna, Kommugudem (V), Buttaigudem (M), W.G. District has filed a Revision petition before the Government of A.P., against the orders of the Addl. Agent to the Govt. cum Project Officer, ITDA, K.R.Puram in SRA No.2/2016 dt.02.03.2019 with a request to set aside the orders passed by the Addl. Agent to Govt. cum Project Officer, ITDA, K.R.Puram in the interest of justice.

4. The Project Officer, ITDA, K.R. Puram cum the Additional Agent to the Government has been requested to furnish the detailed Parawise remarks and connected records in the subject case so as to dispose of the Revision Petition at Government level vide reference 2nd read above. In reply to the above, the Project Officer, ITDA, K.R Puram, in his Lr.dt.02.08.2021 has enclosed the copy of order issued by the Additional Agent to Government West Godavari District passed in SRA No.2/2016 dt.02.03.2019 and the remarks on the affidavit filed by the Petitioner.

5. Meanwhile, the petitioner Sri Alapati China Somaraju S/o Ramanna, Kommugudem (V), Buttaigudem (M), West Godavari District has filed W.P.No.11913 of 2019 before the Hon'ble High Court with a request to suspended the orders of Additional Agent to Government cum Project Officer, ITDA, K.R Puram in S.R.A.No.2/2016. Accordingly, the Hon'ble High Court passed orders dt.14.07.2021 in W.P.No.11913 of 2019, the operative portion of the order is as follows:

> *"As revision petition filed by the petitioner is pending before the Government from 30.04.2019, the Government is directed to dispose of the Revision strictly in accordance with law. As interim suspension of the order in S.R.A.No.2 of 2016, dt.02.03.2019 was already passed by this Court on 15.10.2019, pending disposal of writ petition, the same order has to be continued till the disposal of the revision by the Government."*

6. The said Revision Petition has been posted for hearing before the Hon'ble Revision Authority on several dates and finally 26.11.2022 duly informing the same to the petitioner and defendants vide reference 5th read above. During the course of the hearing and on perusal of the connected records/relevant materials and Para-wise Remarks submitted by the Project Officer, ITDA, K.R. Puram cum Additional Agent to the Government and written arguments filed by both parties counsels, the Revision Authority has observed that:

a) The Revision Petition filed by Sri Alapati Chinna Somaraju S/o Ramanna, a non-tribal against the orders of Addl. Agent to Government/Project Officer, ITDA, K.R Puram passed in S.R.A.No. 2/2016, dated 02.03.2019 for the lands measuring extent of Ac.2.57 cts in RS No 156 and Ac.2.43 cts in RS No 159 of Lakshmudugudem(V), Buttaigudem (M), W.G.District, allowing the Appeal filed by Kum. Chodem Durga D/o Butchanna, Scheduled Tribe for the said lands, while setting aside the order passed by the Special Deputy Collector(TW), K.R.Puram, in S.R.No.4/2015, dated. 19.12.2015.

b) The main contention of the Revision Petitioner is that the scheduled lands originally belonged to Sri Prathivadhi Bayankaram Annan family and subsequently the said property was purchased by Smt.Polnati Santhamma through a registered deed dt.24.06.1950. That the father of the Revision Petitioner purchased the land in question through an agreement of sale on 14.10.1969 and got registered the said sale transaction on 02.07.1970 and an order was already passed by the Special Deputy Collector(TW) in S.R.No.1230/1990, dated.08.04.1991 holding that there is no violation of Land Transfer Regulations as such the principle of resjudicata is applicable to the case, and requested to set aside the order passed by the Appellate Authority in S.R.A. No. 2 of 2016 while upholding the order of SDC(TW) passed in S.R.No.4/2015. The 1st Respondent, Kum. Chodem Durga requested to uphold the order the of Appellate Authority who passed an order in her favour.

c) The two questions arising out of the Revision Petition filed. One is whether the claim of the Revision Petitioner on the basis of an un registered sale agreement dated.14.10.1969 and subsequent registered sale deed executed on 02.07.1970 in their favour is valid or not. While second question is whether the principle of resjudicata is applicable to the facts of the case.

d) The finding of the appellate authority, viz., the second respondent here in is that "a perusal of the certified copy of document No.714/1970, it is clearly mentioned that the Scheduled Property was handed over to the purchaser on the date of execution of the document on 29.06.1970 and as such the provisions of Section 3(1) (a) of Regulations 1 of 70 are contravened in this case."

e) Therefore the finding given by the Appellate Authority clearly reveals that the land transfer effected between the non-tribal parties after the commencement of the Andhra Pradesh Schedule Area Land Transfer Regulations 1 of 59 as amended by 1 of 70 which came in to force on 03.02.1970 prohibiting the transfer of land situated in the scheduled area in favour of non-tribals either from tribals or from non-tribals.

f) Therefore the plea on the basis of an un-registered sale deed of 1969 in respect of physical possession of land, is inconsistent with the material recitals in the Registered Sale Deed No.714/1970. Hence the transfer of land in question vide sale deed bearing No. 714/1970 is and void and in breach of the provisions of LTR 1 of 70. The Hon'ble High Court of AP held such land transactions are hit by the LTR 1 of 70 (Kakarla Nageswara Rao and Others Vs Government of A.P. 1995(3) ALT 164). In the case of V. Somalamma Vs. Deputy Collector, Tribal Welfare, 1993(1) ALT 403 (F.B.) a Full Bench of the Hon'ble High Court observed that all laws made applicable to the Scheduled areas "indicate an anxiety to safeguard the interest of the tribals in the scheduled areas and to see that the land in the scheduled areas should be in possession of tribals only".

g) With regard to the aspect of the application of principle of resjudicata, the Hon'ble High Court of Andhra Pradesh in an unreported decision, (Ch.Satyanarayana Vs the Agent to Government District Collector, Visakhapatnam in W.P.No.6065/1979, dt.31.12.1985), held that 'the mere fact that on the earlier occasion it was dismissed does not confer any right on the petitioner, so long as the statutory order subsists, Viz., the void sale subsists, while disagreeing the operation of resjudicata in such cases.

h) The division bench of High Court of AP (Special Deputy Collector (Tribal Welfare) Vs Datla Venkapathi Raju and Others 2003 (1) ALD 386, 2002 (4) ALT 669) held that the principle of resjudicata is not applicable when the parties to the earlier proceeding and the present proceeding are different. Further, the issue that arose in the earlier proceeding and the issue that arises for consideration and decision in the present proceeding are also different.

i) In the present case a sale transaction was effected between the non-tribal parties in respect of lands situated in the scheduled area which is in clear violation of LTR 1 of 70 as such it is and void. The principle of resjudicata is inapplicable to the facts of the case, since the issues dealt in the earlier proceedings conducted by Special Deputy Collector (TW), K.R Puram in S.R.No.1230/1990 are different and distinct from the subject matter of the dispute covered in the Appeal in S.R.A.No.2/2016 and its related case in S.R.No.4/2015.

j) Therefore, the order passed by the Appellate Authority/Project Officer, ITDA, K.R.Puram in S.R.A.No.2/2016 is hereby upheld. The Revision Petition is dismissed. Interim orders passed if any are hereby vacated in the matter.

7. Government after careful examination of the revision petition and the circumstances stated supra and in exercise of the powers conferred under Section 3 of A.P.S.A.L.T.R.,1959 as amended by Reg. 1/70, the orders passed by the Appellate Authority Project Officer, ITDA, K.R.Puram in S.R.A.No.2/2016 are hereby upheld and the Revision petition filed by Sri Alapati China Somaraju S/o Ramanna, Kommugudem Village, Buttaigudem(M), West Godavari District with regard to the Scheduled property covered by R.S.No. 156 (Ac. 2.57 cts.) and R.S.No.159 (Ac. 2.43 cts.) of Lakshmudugudem(V), Buttaigudem (M), West Godavari District is Dismissed and Interim orders passed if any are hereby vacated in the matter.

8. The Collector & District Magistrate, West Godavari District, Eluru is requested to take necessary action in the matter accordingly and acknowledge the receipt of the case records, which are returned herewith.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OR ANDHRA PRADESH)

KANTILAL DANDE
SECRETARY TO GOVERNMENT (TW)

To

The Agent to Government cum Collector & District Magistrate, West Godavari District, Eluru.

The Additional Agent to Government cum Project Officer, ITDA, Kotaramachandrapuram, West Godavari District.

The Special Deputy Collector (TW), Polavaram, West Godavari District.

Sri Alapati China Somaraju S/o Ramanna, Kommugudem Village, Buttaigudem(M), West Godavari District.

Kum. Chodem Durga D/o Butchanna, Turupu Regulakunta Village, Buttaigudem(M), West Godavari District.

Copy to:

Sri Suresh Kumar Potturi Advocate, Sri A. Yellamandayya Advocate, H.No.7-93/1, Kondapalli Village, Ibrahimpatnam, NTR District-521228

PS to Dy.CM(TW),
PS to Secretary(TW)
Sf/Sc

//FORWARDED : : BY ORDER//

Rajani

SECTION OFFICER